

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C.**

In the Matter of

Telephone Number Portability

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CC Docket No. 95-116

COMMENTS OF THE ILLINOIS CITIZENS UTILITY BOARD

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The Illinois Citizens Utility Board submits these Comments to the Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association filed on January 23, 2003 (“CTIA Petition”). The Citizens Utility Board (“CUB”) cautions the Federal Communications Commission (“FCC” or “Commission”) that the Cellular Telecommunications & Internet Association’s (“CTIA’s”) Petition should not be allowed to forestall the deadline for service provider portability within the wireless industry.

INTRODUCTION

CTIA’s Petition seeks a declaratory ruling that wireline carriers must provide number portability to wireless carriers operating within their service areas. In its Petition, the CTIA argues that the inconsistency in telephone call rating systems between wireline and wireless service providers - the so-called “rate center disparity” issue - must be resolved now and to their satisfaction or “the reality of wireline to wireless porting will be at risk.”¹ Yet, as the CTIA admits, the dispute between the wireline carriers and the wireless carriers that underlies this issue is not new and has defied resolution by the carriers themselves, by the North American

¹ Telephone Number Portability, Petition for Declaratory Ruling of the Cellular Telecommunications and Internet Association, CC Docket No. 95-116, *Memorandum Opinion and Order*, 13 FCC Rcd 16315, 16317, (“CTIA Petition”) at 19.

Numbering Council (“NANC”), and by this Commission for many years.² Given that neither the CTIA “solution,” nor any other proposed solution has shown itself to be acceptable to all the industry stakeholders, this problem can only be said to be intractable at this time and perhaps, for the foreseeable future. As CTIA states in its Petition, it has repeatedly brought this “rate center disparity” to the Commission’s attention.³ Clearly, the FCC has had the opportunity to impose the CTIA’s solution, or another solution, and has not chosen to do so at this time. The Commission has, however, made it clear that wireless providers will be required to implement local number portability (“LNP”) by the November 2003 deadline, notwithstanding the rate center issue.

The Commission must weigh the competitive effect of a request for forbearance of the portability rule, determine if forbearance will “promote competitive market conditions,” and decide if forbearance is “in the public interest.”⁴ The Commission has already indicated that delaying the implementation of wireless portability until all providers have the same capabilities is not justified.⁵ If the relief CTIA requests were granted, it would result in wireless carriers failing to meet the November 24, 2003 number portability deadline.⁶ This deadline should not be delayed for the several reasons. First, the impediment cited by CTIA is one that will not affect the vast majority of situations when customers desire number porting, and should not be used to justify any further delay in the implementation of wireless portability. Second, the inability of wireless consumers to port wireless numbers from one wireless carrier to another

² CTIA Petition at 3. CTIA declares in its Petition that “this is neither a new nor a difficult issue, but its correct and timely resolution is critical if the expectations of consumers ...are to be met.”

³ *Id.* at 5-12.

⁴ 47 U.S.C. §160(b).

⁵ *Memorandum Opinion and Order*, ¶ 91

⁶ The Commission currently has in place a November 24, 2003 deadline for the implementation of Local Number Portability (“LNP”) for 1) all wireless carriers in the top 100 Metropolitan Statistical Areas (“MSAs”) and 2) all other wireless carriers that were requested to do so by another carrier (called a bona fide request, or BFR). *Memorandum Opinion and Order*, CC Docket No. 95-116 (rel. July 26, 2002).

wireless carrier is a far greater impediment to competition, at this time, than the problem raised by the CTIA in its petition. This lack of number portability within the wireless industry is an anti-competitive hurdle that can and should be removed on November 24, 2003. Third, the Commission and Congress have declared that competition is in the public interest and that extending the deadline for wireless portability any further would harm consumers. Finally, the Commission must ensure that, during this time of economic downturn when bankruptcy and failure has lead to the demise of many telecommunications carriers, it operates to enhance competition rather than further deter it.

I. THE RATE CENTER ISSUE IS NO EXCUSE TO NOT MEET THE DEADLINE FOR WIRELESS PORTABILITY

CTIA's Petition represents a thinly veiled attempt to avoid implementing LNP and consequently to impede the development of competition. The CTIA is currently requesting the Commission for a declaratory ruling that "wireline carriers have an obligation to port their customers' telephone numbers to a CMRS provider whose service area overlaps the wireline carrier's rate center and that no agreement between the two carriers, beyond a standard service level porting agreement, is necessary."⁷ The problem identified by CTIA is one that this Commission, as well as both the wireline and wireless industries, has known about since at least 1997. In fact, most customers realize that when they move locations within a community, portability allows them to take their wireline phone number with them to the new location in some situations. Portability is not possible, however, when the customer's new location is outside of the original rate center – the customer must then be assigned a new telephone number in the new rate center. The rate center problem affects wireline carriers, because they are not able to port an existing number from one rate center to another. The rate center problem does

⁷ CTIA Petition at 1.

not, however, significantly affect service provider portability within the wireless industry (the ability to port a wireless number from one wireless provider to another), as most wireless carriers are located in the same rate centers.

The essence of this issue is that wireline local exchange carriers (“LECs”) route and rate (price) calls with much more sensitivity to distance than wireless carriers. Wireless calls are typically billed as local, regional, national, or international. The wireless local calling area comprises an entire metropolitan area, and a wireless regional calling area is generally multi-state. However, wireline local calling areas are as little as eight miles in radius. Wireline toll areas are bands of about eight to fifteen miles, fifteen to seventy-five miles and seventy-five to the limits of the LATA (or local exchange service calling area). Rate centers are highly granular geographic subdivisions (of LATAs) established by the incumbent local exchange carriers for a variety of reasons. One of the functions of a rate center is to measure the distance of a call and thereby establish its price.

Phone numbers, when allocated to a wireline service provider, must be assigned to end users within one and only one rate center because they are used for routing as well as rating of calls. Even wireless carriers must associate blocks of phone numbers with one and only one rate center. Generally, the rate center chosen by wireless carriers is the one in which their facilities interconnect with the wireline carriers networks. Because wireless carriers use less granular billing schemes than wireline carriers, they assign phone numbers to customers whose billing address is beyond the boundaries of the rate center within which the numbers are registered. By appearances a “wireless rate center” comprises numerous wireline rate centers, as the CTIA argues.⁸ This, however, is a redefinition of the rate center. The “wireless rate center” does not consist of a non-intersecting, geographically bounded area with phone numbers assigned to it

that can only be used within it. The problem is not one of inconsistent rate centers as the wireless industry would have it, but of asymmetric billing systems.

The FCC acknowledged the significance of asymmetric billing problems in establishing the rate center boundary as the geographic limit for wireline number portability.⁹ This rule is designed to ensure that a wireline service provider does not allow one of its customers with a number ported from another carrier to physically move out of one rate center into another and take their phone number with them. Essentially, what this rule does is mandate that carriers that want to compete with the incumbent local exchange carriers must abide by the rate center scheme established by the incumbent.

It is ironic that the CTIA protests that “a narrow view of wireline LEC number portability obligations would artificially deprive the great majority of wireline customers the opportunity to port their number to a wireless carrier,”¹⁰ in light of the fact that CTIA favors denying all wireless customers the right to port from one wireless carrier to another or to a wireline carrier.¹¹ The limits that the wireline LEC number portability obligations would impose on inter-service portability do not create the rate center problem. The problem emanates from the fact that wireless and wireline carriers use different billing systems, and so far a better solution than the wireline LEC number portability obligations has yet to be found.

The mechanical nature of the rate center problem aside, the thrust of CTIA’s Petition is that an “uncertainty” of some sort is created by this “disparity” in porting, or the inability to port numbers between rate centers, and that this must be addressed by the Commission.¹² The

⁸ CTIA Petition at 6.

⁹ *North American Numbering Council Local Number Portability Administration Selection Working Group Final Report and Recommendation to the FCC*, Appendix D at 5 (§7.3) (rel. April 25, 1997).

¹⁰ CTIA Petition at 6.

¹¹ CTIA admits in its Petition that it has appealed the Commission’s wireless portability requirement in federal court. See CTIA Petition at 2.

¹² *Id.* at 2; 6.

disparity, however, is not new, nor is it unique. As pointed out above, it is a result of long-standing wireline industry reliance on rate centers that precludes the porting of numbers by wireline carriers beyond rate center boundaries. The rate center disparity affects service provider portability within the wireline industry, as well as between wireless and wireline carriers. It does not, however, affect wireless to wireless portability. The implementation of LNP in the wireless industry would greatly serve competition in the wireless industry, as well as the public interest, and therefore should proceed as scheduled.

II. THE 1996 TELECOMMUNICATIONS ACT DEFINED CUSTOMER CHOICE AS THE CORNERSTONE OF THE COMPETITIVE MARKETPLACE

The main principle of the 1996 Telecommunications Act is to promote competition, a principle reflected in the Commission's portability requirement.¹³ In order to best serve this goal, the Commission has repeatedly affirmed the requirement under the 1996 Telecommunications Act that all local exchange carriers provide local number portability.¹⁴ In 1997, the Commission ordered that wireline carriers providing service in the top 100 Metropolitan Service Areas ("MSAs") were required to meet that obligation no later than December 31, 1998.¹⁵ The Commission's order imposed the same requirement on wireless carriers, but allowed wireless carriers until June 1999 to complete the technical changes to their networks that are required for LNP.¹⁶

This is not the first time that the wireless industry has attempted to seek a ruling from the Commission that would have the effect of forestalling number portability. Since the Commission first ordered the wireline and wireless industries to implement LNP, the wireless industry has filed three petitions for extensions of time to meet the Commission's deadlines, each

¹³ 47 U.S.C. §160(b).

¹⁴ 47 U.S.C. §251(b)(2).

¹⁵ *Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999) (FCC 99-19).

offering a different rationale for why they should not be forced to comply with the Commission's mandate.¹⁷ In each case, the Commission has received vehement opposition to a delay from various state commissions and consumer groups. CUB will not reiterate all the arguments made in the petitions and comments, nor the specific procedural issues of each petition. However, it is important to note what the Commission concluded in its last Telephone Number Portability Memorandum Opinion and Order:

We find that wireless number portability will promote competition by making it easier for consumers to switch carriers to pursue better features, coverage, and prices. Delay beyond the one year period we adopt today could impair the development of competition unnecessarily and harm consumers.¹⁸

As CTIA pointed out in its Petition, it has formally raised the rate center issue with the Commission repeatedly since 1997.¹⁹ Therefore, the Commission was well aware of the rate center problem when it made the above-quoted policy statement, but nonetheless concluded that competition would be better served if the wireless industry were LNP-capable. The Commission has been very patient with the wireless industry to date, allowing three separate extensions of the LNP requirement. The current deadline is November 24, 2003 and nothing in CTIA's current Petition warrants any further extensions of that deadline.

The wireless industry has long opposed the implementation of number portability for various reasons. Even in the Petition at issue here, CTIA criticizes the Commission for failing to

¹⁶ *Id.*

¹⁷ See Telephone Number Portability, Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association, CC Docket No. 95-116 (filed Nov. 24, 1997); Telephone Number Portability, Cellular Telecommunication and Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999); Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 01-0184, *Memorandum Opinion and Order*, 17 FCC Rcd 14972 (2002).

¹⁸ *Telephone Number Portability*, CC Docket 95-116, *Memorandum Opinion and Order* ¶28 (rel. July 26, 2002) ("*Memorandum Opinion and Order*").

¹⁹ CTIA Petition at 5.

conduct a cost-benefit analysis of the implementation of wireless LNP, and states that it “continues to believe that wireless LNP would fail such analysis.”²⁰ However, CTIA has conveniently failed to take into account the true benefits of wireless portability to consumers. If portability was available, many customers would take advantage of the opportunity to switch wireless providers and therefore the level of wireless competition would be greatly enhanced. The bottom line underlying the wireless industry’s resistance to implementing wireless portability is that they do not want to lose customers. The wireless industry knows that wireless customers value their wireless phone numbers and, if given the chance, would shop around and find the best deal for their money.

III. IT IS AGAINST THE PUBLIC INTEREST FOR THE DEADLINE FOR WIRELESS PORTABILITY TO BE DELAYED ANY LONGER THAN NOVEMBER 2003

Regulatory agencies, including this Commission, are charged with the responsibility to create policy that reflects the best interest of the public.²¹ As pointed out above, Congress wanted to ensure that a competitive market place would be allowed to develop, because competition serves the public interest. In crafting the rules to open the telecommunications market place, the Commission ordered both wireline and wireless providers to implement the relevant technology to be able to provide number portability, because the Commission determined that it would support a competitive market place and therefore the public interest.²² In fact, the Commission concluded in its last *Memorandum Opinion and Order* that “delay beyond the one year period we adopt today could impair the development of competition unnecessarily and harm consumers.”²³ The Commission should not allow the implementation of

²⁰ *Id.* at 16.

²¹ 47 USCS § 151

²² 47 C.F.R. § 251(b); 47 C.F.R. §§ 1,2,4(i).

²³ *Memorandum Opinion and Order*, ¶28

LNP, which will benefit the majority of consumers, to be postponed based on a system impediment that affects very few customers.

Wireless customers today, when considering changing their service providers, must weigh the advantages of a more beneficial calling plan against the disadvantages of having to change their existing wireless phone number. The disadvantages of changing one's phone number are numerous and range from changing address books at home and work and notifying contacts of the change, to business customers having to reprint letterhead, business cards, and advertising. These are the same problems experienced by those customers who were unfortunate enough to experience an area code change when the selected form of area code relief was a geographic split. In these circumstances, the anecdotal evidence of dissatisfaction is overwhelming. State commissions and consumer advocates, including CUB, receive voluminous complaints about the inconvenience and expense associated with a change in phone number when an area code split takes place. For the same reasons, wireless customers that must give up their wireless phone number to switch providers consider having to change their phone number a serious impediment to switching. The Commission itself identified this anecdotal evidence in its last Number Portability Memorandum Opinion and Order:

[A]s wireless service subscribers increase the frequency with which they give out their mobile telephone number, we anticipate that an increasing number of consumers will be reluctant to change wireless service providers unless they can keep the same number. Unless LNP is available, increasing numbers of wireless service consumers – especially those who routinely provide their wireless numbers to others – will find themselves forced to stay with carriers with whom they may be dissatisfied because the cost of giving up their wireless phone number in order to move to another carrier is too high.²⁴

The Commission also asserted the following policy position:

²⁴ *Memorandum Opinion and Order*, ¶ 18.

We emphasize that our actions here should not be interpreted as diminishing our view that wireless number portability is an increasingly important factor in customer choice.²⁵

The Commission clearly recognized the important role number portability plays in promoting competition and should remain steadfast in its enforcement of the current LNP deadline.

The calling packages offered by wireless carriers provide more wide ranging options, including the ability to make toll calls at no additional cost within their allotted minutes of use. The availability of these wide-ranging options creates an attractive environment for comparison shopping for the wireless consumer. The inability to take one's phone number to a new carrier, however, in many cases, is perceived by many wireless customers as limitation of choice. These customers are essentially held captive with one service provider.

CTIA fails to show how consumers would be protected from any further delay in offering full and free choice between wireless carriers if the relief requested in its Petition were granted. The technical problem elucidated in its petition would affect few customers, but wireless portability -- the ability for consumers to freely choose their wireless providers -- guarantees that the public interest will be served. Therefore, it is in the public interest for the Commission to continue to mandate that all wireless carriers comply with the current LNP deadline of November 24, 2003.

Number portability also serves the public interest by contributing to more efficient number assignment. Inefficient number assignment has the effect of draining numbering resources in the North American Numbering Plan ("NANP"), and contributes to the implementation of new Number Planning Areas ("NPAs"), or area codes. The Commission determined that thousand-block number pooling ("pooling") would be used as a number

²⁵ *Id.* at ¶ 23.

conservation tool for both the wireless and wireline industries.²⁶ The FCC determined that pooling would serve the public interest by delaying the need for additional area codes to be assigned and therefore delay the inevitable inconveniences and disruptions caused by the implementation of a new area code.²⁷

Likewise, number portability assists in number conservation efforts by allowing customers to hold on to their numbers when switching providers or moving within a rate center. If customers who switch providers are unable to port their numbers, they must get new numbers from the new provider and allow their old numbers to become stranded for several months (carriers typically refrain from reassigning an abandoned telephone number for between 2 and 3 months before reassigning it – called “aging”). Therefore, both portability and pooling are necessary countermeasures to this problem. Notably, number portability is based on the same network architecture as number pooling – called Local Routing Number, or LRN, technology. All wireless carriers were required to pool as of November 24, 2002²⁸, and therefore all wireless carriers have the necessary technology to implement number portability.

CONCLUSION

For the foregoing reasons, CUB respectfully requests that the Commission reject CTIA’s request for declaratory ruling and maintain the current schedule for wireless LNP deployment. Wireless to wireless portability would greatly enhance competition and serve the public interest. The rate center issue identified by CTIA, on the other hand, does not present any significant barrier to competition. The schedule for wireless portability established by the Commission

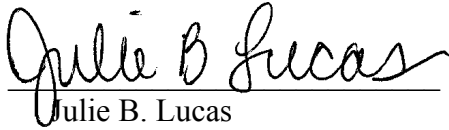
²⁶ Numbering Resource Optimization, CC Docket No. 99-200, *First Report and Order*, 15 FCC Rcd at 7625, ¶ 122, 134 (2000).

²⁷ *Id.*

²⁸ *Id.*

should, therefore, remain in place and CTIA and all other CMRS carriers should be required to implement LNP by November 24, 2003.

Respectfully Submitted,

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